

**PORT OF SEATTLE**  
**MEMORANDUM**

**COMMISSION AGENDA**  
**ACTION ITEM**

**Item No.** 4j  
**Date of Meeting** September 13, 2016

**DATE:** September 6, 2016  
**TO:** Ted Fick, Chief Executive Officer  
**FROM:** James R. Schone, Director, Aviation Business Development  
**SUBJECT:** Early Termination of FireFly Rent A Car, LLC D/B/A FireFly at Seattle-Tacoma International Airport

**Net Proceeds to the Port:** \$1,850,000

**ACTION REQUESTED**

Request Commission authorization for the Chief Executive Officer to execute an early termination agreement, substantially as drafted and attached, in the amount of \$1,850,000 with FireFly Rent A Car LLC D/B/A FireFly at Seattle-Tacoma International Airport.

**SYNOPSIS**

The lessee is requesting early termination of its obligations under their Consolidated Rental Car Facility (RCF) lease and its companion concession agreement with the Port of Seattle due to a lack of successful business performance in exchange for a one-time payment of \$1,850,000.

**BACKGROUND**

FireFly Rent A Car LLC (a subsidiary of Hertz) started its operation from the Airport's Rental Car Facility in August 2014 following its successful bid in a bankruptcy auction for a prior tenant's lease and concession agreement.

However, FireFly was not successful in generating sufficient revenue to make their Seattle operation a viable concern. Prior to the firm's decision to cease operations at the RCF in May 2016, it was paying more than 100% of its gross monthly receipts to the Port to meet its obligations under the lease and concession agreements.

**FINANCIAL IMPLICATIONS**

Acceptance of this lease buyout proposal would result in a one-time payment to the Port of \$1,850,000 in exchange for extinguishing Lessee's minimum concession fee rental obligations of \$620,000, and land rent of \$147,389, per year through May 31, 2022.

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### **STRATEGIES AND OBJECTIVES**

This action supports the Airport's strategic goal of maximizing non-aeronautical net operating income (NOI), as it provides a boost to the current year's income, as well as allows the space in the RCF that is the subject of these agreements to be more productively utilized by a successor tenant.

### **ALTERNATIVES AND IMPLICATIONS CONSIDERED**

**Alternative 1** – Do not allow tenant to terminate lease early.

Pros:

- (1) Holds tenant to their agreed-upon lease obligations.
- (2) Assuming FireFly doesn't default, or file for bankruptcy, the Port would continue to receive monthly rent payments.

Cons:

- (1) Does not return to productive use the portion of the RCF leased by FireFly.
- (2) Port would likely need to pursue default proceedings under the Lease.
- (3) If tenant declares bankruptcy, the Port's damage recovery may be limited to substantially less than the current offer. Even in the absence of bankruptcy, there is risk that the Port will recover a lower damages amount than offered by the tenant.

This is not the recommended alternative.

**Alternative 2** – Continue to negotiate with tenant to achieve a higher buyout amount for early termination of lease.

Pros:

- (1) Port staff calculated a potential maximum Rental Deficiency and Future Damages value of \$3.37 million in accordance with applicable lease provisions.
- (2) Could achieve higher buyout amount than proposed.

Cons:

- (1) Does not return to productive use the portion of the Rental Car Facility leased by FireFly.
- (2) This may put a negotiated settlement at risk, as tenant has indicated they will not agree to a higher amount.
- (3) If tenant declares bankruptcy, the Port's damage recovery may be limited to substantially less than the current offer. Even in the absence of bankruptcy, there is risk that the Port will recover a lower damages amount than offered by the tenant.

This is not the recommended alternative.

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**Alternative 3** – Accept tenant’s offered buyout amount of \$1,850,000 and allow the early termination of their agreements.

### Pros:

- (1) Lessee has agreed to pay this amount to buyout the remaining term of the lease and concession agreement.
- (2) Ensures the Port would receive significant monetary compensation for the early termination of the lease.
- (3) Is significantly higher than Port staff’s calculation of minimum Rental Deficiency and Future Damages amount of \$470,000.
- (4) Allows the Port to move forward with finding a new tenant to occupy the vacated Premises, thus returning them to productive use.
- (5) Avoids litigating the buyout amount and avoids additional legal fees.

### Cons:

- (1) Buyout amount is lower than Port staff’s calculation of maximum Rental Deficiency and Future Damages amount of \$3.37 million.
- (2) Reduces future cash flows from the Rental Car Facility.

**This is the recommended alternative.**

## **ATTACHMENTS TO THIS REQUEST**

- Draft Early Termination Agreement

## **PREVIOUS COMMISSION ACTIONS OR BRIEFINGS**

- None